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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Howard A. Hardee

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09/02/2005

LEYDIG, VOIT & MAYER, LTD.

(SEATTLE OFFICE)

TWO PRUDENTIAL PLAZA

SUITE 4900

CHICAGO, IL 60601-6780

EXAMINER

WILKENS, JANET MARIE

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/998,603	Applicant(s) HARDEE ET AL.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 55 and 58-76 is/are allowed.
- 6) ☒ Claim(s) 41-50, 53, 54, 56 and 57 is/are rejected.
- 7) ☒ Claim(s) 51 and 52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/21/2005</u> | 6) <input type="checkbox"/> Other: _____ |

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Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on June 21, 2005.

Information Disclosure Statement

The information disclosure statement filed June 21, 2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because no signed affidavits of public use or sale (e.g. as evidenced by a second corroborating party) or other corroborating documents have been submitted with the admitted prior art statements. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims

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are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 28-63 have been renumbered 41-76.

Claims 46 and 60 are objected to because of the following informalities: claims 46 and 60 should end in a period and also for claim 60, in line 3, "the the" should be "the". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 42-48, 56, and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claims 42 and 56, "the first and second portions" lacks antecedent basis. Note: no "first" and "second" terminology has been used previously. Also for claims 42 and 56, it is unclear whether or not the "an interior portion of the three-dimensional corner" is the same interior portion as found in the inverted, three-dimensional corner claimed previously (they appear to be the same feature). For claim 45, it is misdescriptive to call the "turned inside out corner" the "the three-dimensional corner" when it is in fact the "inverted three dimensional corner".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christian in view of Collins, III. Christian teaches a canopy (32) formed using a piece of fabric having corners stitched together (Fig. 3). After the corners are made, a second piece of material is stitched to the interior portions of the corners. For claim 22, Christian fails to teach exactly how the corners of the piece of fabric are formed. Collins teaches a fabric structure with corners (see Figs. 3,4), each are formed by attaching portions of adjacent sidewalls together via stitching and then turning the fabric inside out so that the seams are hidden from view (column 2, lines 29-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the corners of Christian in this manner, since this type of corner construction is well known in the fabric art, as shown by Collins, and the corners of Christian obviously need to be formed in some manner, the manner disclosed by Collins satisfying this need and providing the advantage of inside (and not noticeable) stitching lines. Furthermore, in order to securely apply the second piece of material to the corner walls, the excess material of the seam would necessarily have to be positioned to one side.

Claims 41-44, 49, 50, 53, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubacki in view of Collins, III and Dehner. Kubacki teaches a tent

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(Fig. 1) having a substantially waterproof tub floor (17), the floor having four corners.

The tent also includes tent walls (22,23) attached to the floor. For claim 41, Kubacki fails to teach exactly how the corners are formed. Collins teaches a fabric structure with corners (see Figs. 3,4), each are formed by attaching portions of adjacent sidewalls together via stitching and then turning the fabric inside out so that the seams are hidden from view (column 2, lines 29-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the floor corners of Kubacki in this manner, since this type of corner construction is well known in the art, as shown by Collins, and the corners of Kubacki obviously need to be formed in some manner, the manner disclosed by Collins satisfying this need and providing the advantage of inside (and not noticeable) stitching lines. Also for claim 41, Kubacki in view of Collins fails to teach a waterproof sealing tape/second sheet of fabric material attached to the interior portions of the corners. Dehner teaches the use of waterproof sealing tape (66) for covering a seam (see Fig. 2) to prevent unwanted water penetration there through and to provide added strength there at. The tape is heat bonded/welded to the seam (see column 4, lines 11-18). It would have been obvious to one of ordinary skill in the art at the time of the invention to add waterproof sealing tape to the seams of Kubacki in view of Collins, such as is taught by Dehner, to prevent water from entering the sheet through those points and to strengthen to the sheet at the seams. Furthermore, in order to securely apply the tape to the corner walls, the excess material of the seam would necessarily have to be positioned to one side.

Allowable Subject Matter

Claims 51 and 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 55 and 58-76 are allowed. (The allowable subject matter for claim 55 being the method of constructing a corner for a floor tub of a tent or canopy comprising: attaching two portions of a two layered fabric material so as to form a three-dimensional corner, the attached portions forming a seam and the three-dimensional corner being configured so that the second layer of material extends over an internal portion thereof; turning the corner inside out to form an inverted three-dimensional corner wherein the second layer now extends over an exterior portion of the corner; and attaching walls of a tent or canopy to the floor tub. The allowable subject matter for claim 69 being the method of constructing a corner for a floor tub of a tent or canopy comprising: attaching two inner edges of a notch of a two layered fabric material together so as to form a three-dimensional corner, the attached portions forming a seam and the three-dimensional corner being configured so that the second layer of material extends over an internal portion thereof; turning the corner inside out to form an inverted three-dimensional corner wherein the second layer now extends over an exterior portion of the corner; sealing a second sheet of fabric material to an interior of the inverted, three-dimensional corner; and attaching walls of a tent or canopy to the floor tub.)

Claims 45-48, 56 and 57 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed June 21, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Collins, Dehner and Kubacki are nonanalogous art: it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Collins, Dehner and Kubacki all teach structures made of fabric. First, Collins is only being used to show a teaching of constructing corners of a fabric structure. Each corner is formed by attaching portions of adjacent sidewalls together via stitching and then turning the fabric inside out so that the seams are hidden from view. Second, Dehner teaches the use of waterproof sealing tape (66) for covering a seam (see Fig. 2) of a fabric structure to prevent unwanted water penetration there through and to provide added strength there at. The fact that corners are not specifically referred to is irrelevant, since this tape would be advantageous to use over any type of seam. Third, the tent limitations, including the base and sidewalls, are taught by the reference of Kubacki.

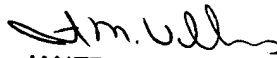
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens
August 31, 2005


JANET M. WILKENS
PRIMARY EXAMINER
AAU 3637